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Supreme Court, U.S.
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No. 94-1517

In the Supreme Court of the United States

OCTOBER TERM, 1994

BOB YARI,
PETITIONER,
v.
JAY PRITZKER,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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Statement of the Case[1]

This lawsuit concerns the application of a provision of Article 1425 of the Civil Code of Puerto Rico, P.R. Laws Ann. tit. 31 (1990). That statute provides that when a plaintiff sells

[1] Yari's Statement of the Case for this Court varies considerably from the facts found by the District Court and affirmed on appeal. Yari's petition does not suggest how he intends to avoid those factual findings. Accordingly, Pritzker relies on the facts set forth in the opinions of the District Court, including *Dopp* v. *HTP Corporation*, 831 F.Supp. 939 (D.P.R. 1993), and in the opinion of the Court of Appeals, *Pritzker* v. *Yari*, 42 F.3d 53 (1st Cir. 1994). Citations to those opinions refer to the opinions as reprinted in the appendix to Yari's petition.

his lawsuit, the defendant has the right to extinguish the claim sold by reimbursing the purchaser for the price paid, together with interest and costs. The United States District Court for the District of Puerto Rico, sitting in diversity, held that Article 1425 applied to the sale by Paul S. Dopp of interests in Dopp's lawsuit against Jay Pritzker, *Dopp* v. *HTP Corporation*, United States District Court for the District of Puerto Rico, Civil Action No. 88-1420. Dopp, the District Court found, sold interests in that lawsuit to petitioner Bob Yari, among others. Accordingly, Pritzker, upon payment to the purchasers, was permitted to extinguish Dopp's lawsuit against him to the extent of the interests purchased.

All parties appealed from a final judgment in Pritzker's favor. Each of the purchasers, and Dopp, challenged the application of Article 1425 to the transactions at issue. Pritzker cross-appealed, seeking reversal of a ruling of the District Court limiting the amount that Pritzker was entitled to extinguish on account of Dopp's transaction with Yari. On appeal, the United States Court of Appeals for the First Circuit affirmed the District Court's holding that Article 1425 applied to each of the agreements and further ruled that Pritzker was entitled to extinguish the full credit transferred to Yari. *See Pritzker* v. *Yari*. Yari alone seeks certiorari from this Court.

Reasons for Denying the Writ

Supreme Court Rule 10 provides that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion." Rule 10 spells out factors "indicat[ing] the character of reasons that will be considered." Yari does not clearly identify the discretionary factors on which he relies in seeking review. Certainly he has no claim that the decisions of the courts below construing Article 1425 are in conflict either with the decision of a state court of last resort or of another United States Court of Appeals. *See* Rule 10.1(b). The only possible anchors for Yari's request for certiorari are that the First

Circuit either "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for the exercise of this Court's power of supervision" or "has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." *See* Rule 10.1(a) and (c). It is plain from a review of Yari's petition, however, that there is no reason for this Court to exercise its discretion to grant certiorari.

The essence of Yari's complaint is that the First Circuit erroneously interpreted Article 1425 of the Civil Code of Puerto Rico. Yari claims that at issue in this case was not the sale of an interest in litigation, to which consequences attach under the Code, but simply a loan, whose cost "is unknown until the litigation ends." Yari at 19. As to that claim, and others asserted by Yari, the District Court and the First Circuit concluded otherwise.

That conclusion hardly constitutes such a significant "depart[ure] from the accepted and usual couse of judicial proceedings" as "to call for an exercise of this Court's power of supervision." *See* Rule 10.1(a). To the contrary, the First Circuit found that the Civil Code applied to Yari's contract with Dopp by looking at its plain language, in light of its "'single, serious, purpose'. . .'to discourage financial speculation in litigation.'" *Pritzker* v. *Yari*, 19a. Although Yari argued that other authorities *from outside of Puerto Rico*, including French commentators, *see* Yari at 16, pointed to a different conclusion, the First Circuit found "such extra textual measures" to be unjustified,

> *especially given the interpretive command of the Puerto Rico legislature: "When a law is so clear and free from all ambiguity, the letter of the same shall not be dis-*

> *regarded, under the pretext of fulfilling the spirit thereof.*" P.R. Laws Ann. tit. 31, § 14 (1967 & Supp. 1989)

Pritzker v. *Yari* at 21a (emphasis added).[2]

Far from "blindly rel[ying] on 'plain meaning'" as Yari asserts, Yari at 23, the courts below found that the Civil Code did not contain the exceptions Yari sought and that the "statutory text," viewed in light of the policy expressed by local sources, was "not sufficiently problematic to invite judicial editing." *Pritzker* v. *Yari*, at 23a. The courts below similarly disposed of Yari's other defenses to the application of Article 1425. *See*, *e.g.*, *id.* at 23a, 25a and 28a-29a. That careful interpretation of the Civil Code did not in any way "depart from the accepted and usual course of judicial proceedings."

Nor does Yari's petition present an "important question of federal law" not yet decided by this Court, or decided by the First Circuit "in a way that conflicts with applicable decisions of this Court." *See* Rule 10.1(c). In an effort to give a federal flavor to what is unquestionably a garden variety interpretation of the Puerto Rico Civil Code, Yari asserts that the courts below violated Article III, Section I of the United States Constitution by usurping "legislative functions." Yari at 14. That is groundless argument. The First Circuit and the District Court did precisely what was required of them by this Court's decision in *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64 (1941).

Pursuant to *Erie*, the courts below sitting in diversity properly looked to the law of Puerto Rico, as contained in its Civil Code and the cases interpreting it, to arrive at a rule of decision. Article III clearly does not prohibit federal courts from intrepreting state statutes. "[A] federal court adjudicating a State-created right solely because of the diver-

[2] The First Circuit would have been equally justified in finding, had it engaged in the extra textual analysis Yari seeks, that Yari's reliance on these commentators was based entirely on statements either misquoted or taken out of context, as Pritzker argued below.

sity of citizenship of the parties is for that purpose, in effect, . . . another court of the state . . .". *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 108 (1945); *see also Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 347 (1816). Far from deciding this case in conflict with prior decisions of this Court, the courts below followed the prior decisions of this Court to the letter.

Conclusion

For the reason stated above, this Court should decline to issue the requested writ.

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